

WASHINGTON STATE DEPARTMENT OF REVENUE

SPECIAL NOTICE

For further information contact:
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Taxable Status of Liquor Agency Vendors

BACKGROUND

Recent decisions by the federal Internal Revenue Service and the Washington State Department of Revenue have changed the taxable status of liquor agency vendors. Liquor agencies operate under a contract with the Liquor Control Board (LCB) to sell alcoholic beverages in areas not served by a state operated liquor store. Vendors are paid a commission based on sales volume.

Historically, the Liquor Control Board has treated the liquor agency vendors as employees of the LCB. This treatment was used for both federal and state tax reporting. At the state level, the employee status means that the income of the agency vendors was not subject to the business and occupation tax. After an income tax audit of a liquor agency vendor, the Internal Revenue Service (IRS) held that agency vendors were not employees. Rather, they are independent contractors. The Liquor Control Board was issued a Technical Advice Memorandum confirming the position of the IRS. The Liquor Control Board asked the Department of Revenue if the federal ruling would affect the state tax status of agency vendors.

Generally, the Department of Revenue's regulation (WAC 458-20-105) for distinguishing between employees and independent contractors uses the same factors used by the IRS. Applying those factors to liquor agency vendors, the Department reached the same conclusions as the Internal Revenue Service. In addition, the Department found that agency vendors are not members of the State Employees' Retirement Systems and are not considered employees by the Department of Labor and Industries. Based on these factors, the Department of Revenue now considers liquor agency vendors to be independent contractors subject to the business and occupation tax on their commission income.

REPORTING AND REGISTRATION

The change in status of liquor agency vendors by the Department of Revenue is contrary to the previous position of the Department. In this type of situation, it is the policy of the Department to provide prospective reporting instructions to affected businesses. Activity prior to the change will not be affected. Beginning on April 1, 1995 commission income will be subject to the business and occupation

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tax under the Service and Other Business Activities classification. The current tax rate for the Service classification is 2.09 percent times the amount of the commission. The tax will apply to commission income received on or after April 1, 1995.

Many liquor agencies are part of a larger business operation. For example, a hardware store may have a portion of the premises devoted to the liquor agency. Both areas will be operated by the same business. In these cases, the commission income will simply be another part of the taxable income of the business. If the liquor agency is not part of another business, it will be necessary for the agent to register with the Department of Revenue by filing a Master Business Application. Applications can be obtained from our Telephone Information Center. The Department of Revenue does not charge a fee for registration. There is currently a business and occupation tax credit for small businesses of up to \$35 per month.

If you need assistance, please call your nearest Revenue field office or the Telephone Information Center at 1-800-647-7706.

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